



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #5

REQUESTED ACTION: Subscription to the Bylaws amendments proposed by the Committee on Bylaws to allow for their consideration at the Annual Meeting of the Association.

At its June 2020 meeting, the House of Delegates approved the report of the Special Committee on Association Structure and Operations recommended that the Association Bylaws be amended to address remote meetings of the Association, the House of Delegates, and sections and committees. The Committee on Bylaws was charged with developing appropriate Bylaws amendments to implement this recommendation, and the committee's report with proposed amendments is attached.

The committee is proposing amendments to Article V, Section 5 to add a reference to remote meetings of the House of Delegates; to Article XII, Section 3 to clarify "in person" attendance at meetings of the Association; and to re-title Article XIII, currently named "Meetings by Telephonic Equipment," as "Remote Meetings and be expanded to cover new forms of interactive communications technology. The committee also recommends that (a) an Association entity study whether to recommend legislation to amend Not-for-Profit Corporation Law §603 to make permanent the permissibility of holding annual / membership meetings of not-for-profit corporations by remote means and (b) the Nominating Committee be asked to consider whether the Model Rules of the Nominating Committee should be amended to provide for remote meetings given the unique aspects of the Committee's charge and process.

Under procedures established in the Bylaws, the proposed amendments must be subscribed to by a majority of all members of the House of Delegates in order to be considered at a meeting of the Association. Subscription can take place at this meeting to allow for consideration of these proposed amendments at the Annual Meeting of the Association on January 30, 2021.

The report will be presented at the November 7 meeting by Robert T. Schofield, IV, Chair of the Committee on Bylaws.



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**COMMITTEE ON BYLAWS**

**ROBERT T. SCHOFIELD, IV**

Chair

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**October 20, 2020**

**To: Members of the House of Delegates**

**Re: Report on Proposed Bylaws Amendment to Govern Remote Association Meetings**

**INTRODUCTION**

At its June 27, 2020 meeting, the House of Delegates approved a recommendation from the Special Committee on Association Structure and Operations that the Association Bylaws be amended to address remote meetings of the Association, the House of Delegates, and sections and committees. The Special Committee’s recommendation is attached is Exhibit “A.” This Committee subsequently was asked by leadership to develop Bylaws amendments to implement this House action.

After considering the issues, the committee recommends that Article V, Section 5 be amended to add a reference to remote meetings of the House of Delegates; that Article XII, Section 3 be amended to clarify “in person” attendance at meetings of the Association; and that Article XIII, previously titled “Meetings by Telephonic Equipment,” be re-titled “Remote Meetings” and be expanded to cover new forms of interactive communications technology. The Committee also recommends that (a) an appropriate Association entity be requested to consider the recommendation of legislation to amend Not-for-Profit Corporation Law §603 to make permanent the permissibility of holding annual / membership meetings of not-for-profit corporations by remote means and (b) the Nominating Committee be asked to consider whether the Model Rules of the Nominating Committee should be amended to provide for remote meetings given the unique aspects of the Committee’s charge and process.

**STUDY OF ISSUES**

As set forth in the report of the Special Committee, until April 2020 all meetings of the House of Delegates were held in-person only. As a result of the COVID-19 pandemic, House meetings since April 2020 have been held remotely, and it is anticipated that meetings will continue to be held in a similar manner for the foreseeable future. While a return to in-person

meetings is important and highly desirable, remote meetings have demonstrated advantages including increased participation and travel cost savings. We therefore propose amendment of Article V, Section 5 of the Bylaws to provide for remote attendance at House meetings on an ongoing basis.

For a number of years, Article XIII of the Bylaws has provided for “meetings by telephonic equipment” that has enabled sections and committees to hold remote meetings. However, this article is silent with respect to the House of Delegates. Aside from making clear that remote meetings are available for the House, this article is in need of updating to make it relevant to current and future technology.

Historically, Not-for-Profit Corporation Law §603 required that membership meetings of not-for-profit corporations be held in person. A recent amendment to the statute provides an exemption for meetings taking place through December 31, 2021; it is unclear whether that exemption will be extended. We propose the amendment of Article XII AND Article XIII to account for this possibility. We also believe that an appropriate entity of the Association should be asked to review whether legislation should be proposed to eliminate the requirement that membership meetings (such as the Annual Meeting) be held in person.

Finally, we considered whether amendments to the Bylaws with respect to the Nominating Committee are needed to account for remote meetings. We concluded that the existing provisions for the Nominating Committee, coupled with the amendments we propose in this report, are sufficient. However, the Model Rules of the Nominating Committee clearly contemplate in-person meetings. While the Nominating Committee is permitted to adopt amendments to the Model Rules for a given committee year, such amendments are not permanent; any permanent amendments must be adopted by the House. Given the unique aspects of the Nominating Committee’s charge and process, we recommend that the Nominating Committee be asked to consider whether the Model Rules of the Nominating Committee should be amended to provide for remote meetings under any circumstances.

## **PROPOSED LANGUAGE**

The Committee proposes that Article V, Section 5 of the Association’s Bylaws be amended as follows:

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### **Section 5. Meetings.**

**A.** Upon not less than 15 days’ written notice, the House of Delegates shall meet at such times and places as it shall fix, but not less than four times each year including one meeting to be held in conjunction with the Annual Meeting of the Association. Such meetings shall be conducted in person or as authorized by Article XIII.

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The Committee proposes that Article XII, Section 3 of the Association's Bylaws be amended as follows:

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**Section 3. Quorum.** At every meeting of the Association the presence in person, as defined by Article XIII, of 100 members shall constitute a quorum. Only active members of the Association shall have the right to vote at any meeting of the Association, and no vote shall be cast by proxy.

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The Committee proposes that Article XIII of the Association's Bylaws be amended as follows:

### **XIII. MEETING BY TELEPHONIC EQUIPMENT REMOTE MEETINGS**

**Section 1.** If authorized by law, the Annual Meeting and any special meeting of the Association may be conducted by means of communications technology which allows all members attending the remote meeting to have a reasonable opportunity to participate in the meeting. A written record of all action taken at such meetings shall be maintained.

**Section 2.** The House of Delegates may, upon not less than 24 hours' written notice by mail or electronic means, conduct an otherwise properly noticed meeting by means of a conference telephone or similar communications equipment technology which allows allowing all members participating in attending the remote meeting to have a reasonable opportunity to participate in the meeting able to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting. A written record of all action taken at such meetings shall be maintained.

**Section 3.** Any section and any committee, including but not limited to the Executive Committee and excepting the Nominating Committee unless it adopts changes to its Model Rules to specifically adopt this authority, may, upon not less than 24 hours' written notice by mail or electronic means, conduct an otherwise properly noticed meeting by means of a teleconference or other communications technology which allows all members attending the remote meeting to have a reasonable opportunity to participate in the meeting. A written record of all action taken at such meetings shall be maintained.

**Section 4.** Whenever used in these Bylaws, Pparticipation through communications technology by such means shall constitute presence in person at a meeting.

**Section 5.** Whenever a meeting is held in accordance with this article, the place of the meeting shall be deemed to be Albany, New York.

A complete set of redlined Bylaws is attached as Appendix “B.”

The Committee makes the following recommendations to the House of Delegates:

- **Recommendation #1:** That the House subscribe to the proposed amendments of the Bylaws in the form set forth above such that the proposed amendments can be put forth for a vote of the membership at the January 2021 Annual Meeting.
- **Recommendation #2:** That an appropriate entity of the Association should be asked to review whether legislation should be proposed to eliminate the requirement in Not-For-Profit Corporation Law §603 that membership meetings be held in person.
- **Recommendation #3:** That the Nominating Committee be asked to consider whether to recommend permanent amendments to the Model Rules to provide for remote meetings under any circumstances.

## CONCLUSION

Our Committee proposes the foregoing amendments to the Association’s Bylaws to enhance flexibility in conducting its meetings, remotely or in person. We commend them to you for your consideration and subscription at the November 7, 2020 meeting of the House of Delegates. If subscribed, the above amendments will be presented for discussion and adoption at the 2021 Annual Meeting of the Association.

Respectfully submitted,

## COMMITTEE ON BYLAWS

Robert T. Schofield, IV, Chair  
Anita L. Pelletier, Vice Chair  
Eileen E. Buholtz  
Michael E. Getnick  
LaMarr J. Jackson  
A. Thomas Levin  
Steven G. Leventhal  
David M. Schraever  
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